

Dealership Update



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Greetings From the EEOC!

By John Donovan (Atlanta)

Dealers across the country have been receiving letters from the EEOC pointing out that they have failed to file their EEO-1 Report (“Employer Information Report”) last year and reminding them that they are required by law to file the report by September 30 of this year and annually thereafter. Many dealers have no idea what the EEOC is talking about.

The EEO-1 Report is an annual survey of an employer’s workforce which must be completed by employers who employ 100 or more employees, or who employ 50 or more employees *and* have a federal contract or subcontract in excess of \$50,000. This report has been required since the mid-1970s and is authorized by Title VII of the Civil Rights Act.

The Report is essentially a “snapshot” of your employees, broken down into ten major job groupings, which match specific groupings in the U.S. Census. The employees in each job grouping are then broken down further to reflect the race, ethnicity and sex of each incumbent. The report is normally completed in the third quarter of each year and submitted to the Joint Reporting Committee before September 30.

The data from each employer’s report is entered into a data base where it is compared with other companies in the same industry and in the same geographic area. The government then uses this data for a number of purposes, including selecting contractors for audits of their affirmative action plans and other investigations. In some areas, the EEOC routinely asks employers to submit a copy of their most recent EEO-1 report in connection with the investigation of any discrimination charge. Some states and municipalities ask to see the report when an employer bids on a contract.

Many dealers who are subject to the EEO-1 reporting requirement have never filed a report with the Joint Reporting Committee. In fact, in 2005, fewer than 2,000 of the approximately 21,000 dealers in the U. S. filed the report. The law does not empower the EEOC to fine an employer or to impose any other penalty for failing to file the report. But if an employer refuses to file the report, the EEOC can request that a federal court issue an order directing the employer to file it.

Because the letters being sent to dealers contain a unique “LoginID” and “Password,” we expect that the EEOC will track dealers’ compliance with the reporting requirement in the months ahead. Therefore, even if you decide not to file the report this year, you should begin to collect race and ethnicity information on all current employees as well as on new hires. You should also code the various dealership jobs with the corresponding EEO-1 job grouping. That way, if the EEOC sends a second letter demanding that your dealership file the report, you will be in a position to respond quickly with a properly completed survey.

If you have any questions about the report or your reporting obligation, or if you would like information concerning how to lawfully survey your workforce and how to properly classify your employees into the proper census job group, contact any F&P office and ask for a member of the Dealership Practice Group.

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Religious Discrimination: Just How Different Is it?

By John Donovan (Atlanta)

Many employers assume – incorrectly – that they can avoid all discrimination claims by simply treating everyone exactly the same and making no exceptions. While that approach will keep you out of most discrimination problems, it can still result in claims of religious discrimination. Here’s why.

Title VII of the Civil Rights Act prohibits discrimination on the basis of race, color, sex, national origin and religion. Generally, this means that an employer may not treat an employee in one of the protected groups any less favorably than an employee outside the protected group.

But the law also provides that an employer must “reasonably accommodate” the religious beliefs of its employees. This means that you must allow employees to exercise their religious beliefs at work so long as it does not impose an “undue hardship” on the company or adversely impact the employee’s coworkers. In some cases, this may require you to treat someone more favorably than others because of their religious beliefs.

Religious accommodation issues arise in three different areas:

Work schedule

An employer may not ask about an employee’s religious beliefs or practices during the application and hiring process. If you ask about the applicant’s ability to work the scheduled hours, you must specifically preface the question with “Without considering your religious beliefs...” As a result, an employer may discover that it has hired a sales person who for religious reasons cannot work on Saturday, most dealerships’ busiest day.

If the employee asks for an accommodation, that is, to be excused from work on Saturday, you must determine if the employee’s absence will impose an “undue hardship” on the dealership. While most sales managers are quick to say that it will, in reality that is rarely the case. If you check your payroll records, you will probably find that of a 20 person sales force, you probably average only 16 or 17 working on any given Saturday. A handful are always going to be off due to illness, vacation, family emergencies, etc. And it would be unlikely that a sales manager could

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testify credibly that the absence of a single employee would cost the dealership business or inconvenience a customer.

In some cases, one or more of the other sales people may complain that the employee requesting the accommodation is being treated more favorably than they are, because of his religion – and this is true. But the law requires that the employer grant the accommodation if possible. So, what if the entire sales force decides to convert and worship on Saturday? No problem. While it is possible for a dealership to accommodate one or two absences on Saturday, it would not be a reasonable accommodation to allow everyone to have the day off. Therefore, the reasonable accommodation would be to simply allow the employees to take turns, scheduling one or two off each Saturday.

An employer need not grant every employee's request not to work on Saturday. For example, if the employee is the Saturday receptionist or is a technician whose absence would require their coworkers to work on Saturdays more frequently than they otherwise would, then the accommodation need not be granted.

Job Duties

In some cases, employees may request that they not be required to perform some aspect of the job due to a conflict with their religious



beliefs. For example, a sales trainee was directed to read and memorize passages from "The Greatest Salesman in the World" as a part of the dealership's sales training program. The employee refused on the grounds that the book's ideas conflicted with her Christian beliefs. As a result, she was dropped from the training program and terminated. She sued on the ground that the employer failed to make any effort to reasonably accommodate her beliefs. The case was subsequently settled.

In another case, when a pharmacist notified his employer that his religious beliefs would not permit him to sell condoms, he was terminated. Again the employee sued arguing that the employer made no effort to accommodate his beliefs, despite the fact that accommodation would be relatively easy (allowing another employee to ring up the sale.)

Again, if you can prove that it would not be feasible to change the employee's job duties because it would impose an undue hardship on the business or would require a coworker to perform significant additional duties, then the accommodation need not be granted.

Religious Dress or Appearance

Most dealerships have some form of dress code or appearance standards. These standards may be enforced – unless they conflict with an employee's religious beliefs. For example, your receptionist converts to Islam and begins wearing a scarf to cover her hair while at work, because Islam teaches that women must dress modestly in public. Does the veil impose an undue hardship on your business? Probably not. An airline has been taken to court by Muslim ticket counter personnel who were not allowed to wear their scarves with their prescribed uniforms.

In that case, the court found that, while the company did have an established policy concerning appearance of customer contact employees, allowing them to wear the veil at work was a reasonable accommodation. Dealers face similar problems with employees who wear beards or turbans for religious reasons. In most cases, these things must be permitted, despite a company policy to the contrary.

That's not to say that religious beliefs always trump a dress or appearance code. For example, it probably would not be reasonable for safety reasons to allow a female technician to wear a veil. A body shop painter need not be allowed to wear a beard if it would interfere with the proper wearing of a required breathing device. A receptionist with facial piercings could be required to remove or cover up piercings while at work even if she wears them for religious reasons.

Religious discrimination claims are on the upswing. Most of the claims are the result of employers being unaware of their duty to "reasonably accommodate" their employees' religious beliefs and therefore making no effort to do so. In light of this, we recommend that any time an employee or an applicant requests a special consideration because of his or her religious beliefs, a dealer should make a thorough inquiry into the actual impact of the request on the dealership's operations and on the individual's coworkers, before granting or denying the request.

For more information email the author at jdonovan@laborlawyers.com or call 404.231.1400.

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